IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SEVENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 8748 of 2003

Between:

1.The Managing Director, A.P. State Handloom
Weavers Co Operative Society Ltd., Narayanguda
Hyderabad.

2.The Marketing Officer/Manager, A. P. State Handloom
Weavers Co Operative Society Ltd., Abids, Hyderabad,

...PETITIONERS

AND

1.The Deputy Commissioner of Labour,
Appellate Authority, Under the Shops and
Establishment Act, Hyderabad.

2.The Asst.,Commissioner of Labour,Controlling
Authority Under A.P. S & E Act, Hyderabad- III
Anjaiah Karmika Bhavan, RTC X Roads, Hyderabad.

3.Smt.K.Rajeswari wife of S.K.Raghu, R/o H.No.4/6
LIGH, Bharatnagar Colony, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or orders more particularly one in the nature of Writ of Certiorari and call for the records relating to the order dated 25-03-2003 passed in I.A.No.9 of 2002 in S. A. No. of 2002 and quash the same consequently remand the matter to the 1st respondent for fresh disposal of appeal on merits.

Counsel for the Petitioners: MR.N.RAJESWAR RAO

Counsel for the Respondent Nos.1 & 2:G.P. FOR LABOUR

Counsel for the Respondent No.3: MR.G.VIDYASAGAR

The Court made the following:

ORDER

Heard Mr.N.Rajeswara Rao, learned counsel appearing on behalf of the petitioners and also Mr.G.Vidyasagar, learned counsel appearing on behalf of the contesting respondent.

The Management filed this Writ Petition *inter alia* seeking for a writ of Certiorari challenging the orders rejecting the application filed seeking condonation of delay in filing the second appeal.

Few facts which are necessary for disposal of the Writ Petition are that the 3rd respondent was the employee of the petitioners herein whose services were terminated in the year 1991. Thereafter, she filed an appeal before the 2nd respondent under A.P. Shops and Establishment Act, 1988 and the same was allowed as per the order dated, 28-03-2002. The case of the petitioners is that the order was not immediately communicated. On receipt of the certified copy, the second appeal was filed on

02-09-2002 which was beyond limitation. An application was filed before the 1st respondent seeking condonation of delay of 45 days in filing the appeal. The said application was ultimately dismissed on contest only on the ground that the provisions of Limitation Act have no application following the decision in ***The Nalgonda Co-operative Marketing Society Ltd., v Labour Court, Hyderabad .*** Hence the Writ Petition.

Having considered the submissions made and on perusal of the material, the only question which falls for consideration in this Writ Petition on the facts and circumstance of the case is as to whether the provisions of Limitation Act especially Section 5 thereof can be made applicable to the proceedings under the A.P. Shops and Establishment Act?

There is no dispute with regard to the aforesaid facts. The appeal was filed against the order of the 2nd respondent, dated 28-03-2002 with a delay of 45 days. No doubt the petitioners have given sufficient reason for the said delay that the order was not served in time and it is only after obtaining the certified copy, the appeal was filed. In regard to the applicability of the Limitation Act, a Full Bench of this Court in ***The Nalgonda Co Operative Society's case (1 supra)*** held that Section 5 of the Limitation Act is not applicable, to the filing of appeals under the Act. However, a Division Bench of this Court in ***Mahendra Kumar Goyal v Ex-Officio Joint Secretary and Addl.Commisioner of Civil Supplies, Hyderabad*** following the decision of the Supreme Court in ***Mukri Gopalam v C.P.Aboobacker*** has held:

> "In view of Section 29(2) of the Limitation Act, 1963, Sections 4 to 24 of the said Act are applicable to the proceedings not only before the Civil Court, but also before all other authorities and not only to the proceedings under the Civil Procedure Code, but to all other proceedings even under the Special or local law, provided two conditions, namely (1) that the special or local law does not exclude the operation of the Limitation Act, 1963; and (2) that the limitations prescribed under the special or local law is different from what is prescribed under the schedule to the Limitation Act (exist). The same is a stare decis traceable to Article 141 and is the law of the land. As such all other judgments holding contra are inapplicable and the judgments of this Court, be it of single Judge or Full Bench referred to above stood impliedly over-ruled."

Admittedly, in this case the provisions of Shops and Establishment Act does not exclude the applicability of Section 5 of the Limitation Act. In view of the same, it has to be held that the said provision is applicable to the Act in question.

In the circumstances, the Writ Petition is allowed setting aside the impugned order. Further having regard to the reasons shown, which are sufficient for seeking indulgence, the delay is condoned. The Appellate authority viz., 1st respondent is directed to number the appeal and dispose of the same on merits in accordance with law after giving notice and opportunity to both sides within a period of two months from the date of receipt of a copy of this order. It is represented by the learned counsel for the petitioners that pending appeal, the petitioners have deposited the amount with the 1st respondent and the same shall continue till the disposal of the appeal. No costs.

07-04-2005

Hsd

That Rule Nisi has been made absolute as above.

Witness, the Hon'ble Sri Bilal Nazki, the acting Chief Justice, on this Thursday, the Seventh day of April, 2005.

Asst. Registrar

To

1.The Deputy Commissioner of Labour,
Appellate Authority, Under the Shops and

Establishment Act, Hyderabad.

2.The Asst.,Commissioner of Labour,Controlling Authority Under A.P. S & E Act, Hyderabad- III Anjaiah Karmika Bhavan, RTC X Roads, Hyderabad.

3 2 C.Cs to G.P. for Labour, High Court buildings, Hyderabad (OUT)

4 2 CD copies.